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Attorneys for Defendants UBS AG and  
UBS Financial Services, Inc.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

RONALD D. KASSOVER, *et al.* on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

UBS AG and UBS FINANCIAL SERVICES, INC.,

Defendants.

Case No: 08-CV-02753 (LMM) (KNF)  
ECF Case

**NOTICE OF MOTION TO DISMISS  
AMENDED CLASS ACTION  
COMPLAINT**

**NOTICE OF MOTION TO DISMISS**

**PLEASE TAKE NOTICE THAT**, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants UBS AG and UBS Financial Services, Inc. (“UBS” FS”) (collectively, “Defendants”) will and hereby do move to dismiss the Amended Class Action Complaint (“Complaint”) of Plaintiffs Ronald Kassover, Chris Jones, Stephen M. Mittman, Ronald E. Klokke, Jan Schneider, Marjorie Elliot, Rita Tubis, and Helena Tubis (collectively, “Plaintiffs”), and all purported causes of action alleged therein. The hearing on the motion will be at a time to be determined by the Court before the Honorable Lawrence M. McKenna, United States District Judge, located at the United States Courthouse, United States District Court Southern District of New York, Room 1640, Courtroom 15D, 500 Pearl Street, New York, New York.

This motion is and will be made on the grounds that:

- the Investment Advisers Act of 1940 (“IAA”) claim (Count 1) fails because UBS FS is a broker and not an investment adviser, and the IAA does not govern the conduct of brokers or provide a remedy to plaintiffs suing brokers; and
- the Martin Act (N.Y. Gen. Bus. Law §§ 352-359-h) preempts each and every claim under New York law (Counts 2-7).

The above reasons alone require the dismissal of all of Plaintiffs’ claims. The Complaint, however, has further fatal infirmities and the motion is made on these additional grounds:

- the Securities Litigation Uniform Standards Act of 1998 precludes each and every claim under New York law (Counts 2-7), and provides that such claims must be brought, if at all, under the federal securities laws;
- the New York General Business Law Section 349 claim (Count 2) fails because that section does not apply to securities transactions;
- the Negligent Misrepresentation (Count 3), Breach of Fiduciary Duty (Count 4), and Aiding and Abetting Breach of Fiduciary Duty (Count 5) claims fail because each of the Plaintiffs had UBS FS brokerage accounts not advisory accounts, and because brokers do not owe fiduciary duties to their clients;
- the Aiding and Abetting Breach of Fiduciary Duty claim (Count 5) also fails because Plaintiffs have not sufficiently alleged that UBS AG had knowledge of or participated in any supposed wrongdoing;
- the Breach of the Covenant of Good Faith and Fair Dealing claim (Count 6) fails because there is no contract concerning a supposed obligation by UBS FS to support ARS auctions, and such an obligation cannot be created out of the covenant of good faith and fair dealing; and

- the Negligence claim (Count 7) fails because the economic loss rule bars the claim, and because Plaintiffs have not alleged a legally cognizable duty that could give rise to negligence liability.

This motion is based on the Notice of Motion; the Memorandum of Law filed concurrently herewith; the accompanying Declaration of William F. Sullivan and Exhibits; the Complaint; all other pleadings and papers on file in this action; all reply papers to be filed in support of this motion; and on such other arguments and matters as may be permitted by the Court in relation to the motion.

Dated: Los Angeles, California  
July 30, 2008

PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: \_\_\_\_\_ s/

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**CERTIFICATE OF SERVICE**

I, William F. Sullivan, do hereby certify that on July 30, 2008, a true and correct copy of the foregoing Notice of Motion to Dismiss was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the notice of electronic filing. Parties may access this filing through the Court's CM/ECF System.

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s/  
WILLIAM F. SULLIVAN

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